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IN THE

Supreme Court of the United States

OCTOBER TERM 1956

No. 389

MORGANTOWN GLASSWARE GUILD, INC., *Petitioner*

v.

GEORGE H. HUMPHREY, Secretary of the Treasury, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Roy St. Lewis and Carl L. Shipley, on behalf of Morgantown Glassware Guild, Inc., pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above captioned case on June 7, 1956, affirming a judgment of the United States District Court for the District of Columbia dismissing petitioner's complaint for a declaratory judgment on September 20, 1955.

OPINIONS BELOW

The opinion of the Court below is reported at page 1a of the Appendix hereto.

JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C. 1254.

QUESTION PRESENTED

1. Whether the Congress has the power under the Constitution to deny petitioner access to a Federal court exercising jurisdiction under Article III of the Constitution when petitioner has a justiciable controversy arising under the Constitution and the laws of the United States?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Const., Art. III, in pertinent part:

> "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, * * *"

28 U.S.C. 1583, in pertinent part:

> "The Customs Court shall have exclusive jurisdiction to review on protest the * * * rate and amount of duties chargeable and as to all exactions of whatsoever character within the jurisdiction of the Secretary of the Treasury * * * "

STATEMENT OF THE CASE

Petitioner is an American manufacturer of handmade glassware which brought suit for declaratory judgment that the Secretary of the Treasury is depriving it of its statutory right to tariff protection from low-wage foreign imports under the Tariff Act of 1930, Sec. 218(f) and (g), (19 U.S.C. 1001). Peti-

tioner alleged in its complaint that defendant is assessing greatly reduced ad valorem duties on imported handmade glassware uner provisions of the Trade Agreements Act of 1934 and the General Agreement on Tariffs and Trade (Geneva 1947), the first of which is an unconstitutional delegation of legislative authority, and the second of which is an illegal treaty made in violation of the Constitution. Petitioner further alleged that defendant's action was taken in concert with the Secretary of State for the purpose of destroying petitioner's business and giving its domestic market to foreign signatories of the so-called GATT agreement. On August 29, 1955 the trial court dismissed petitioner's complaint on the ground that Congress had given the Customs Court exclusive jurisdiction to adjudicate all tariff questions. On June 7, 1956 the United States Court of Appeals affirmed that decision.

ARGUMENT

Judicial authority and jurisdiction to adjudicate cases arising under the Constitution and laws of the United States are vested exclusively in Art. III courts. *Const., Art. III, Sec. 2.* Congress has no power under the Constitution to transfer that jurisdiction to an administrative tribunal to the exclusion of Art. III courts.

The Customs Court is only an administrative tribunal organized and vested with authority to determine such expert questions as appraisals and classifications i.e., value for purposes of levying an ad valorem tax and such questions as whether a fabric is silk or wool, etc. *Ex parte Bakelite Corp.,* 279 U.S. 438.

Congress has only conferred on the Customs Court exclusive jurisdiction to hear appraisal and classification cases. *28 U.S.C. 1583.* Such cases are against the United States, and are only permitted pursuant to a waiver of sovereign immunity under 19 U.S.C. 1516.

Petitioner's case is not a rate or classification case. Its complaint charged defendant with conspiracy, with exercising authority beyond that granted by Congress, and with acting under an unconstitutional delegation of authority. These are Art. III questions only adjudicable in an Art. III court. *Larson* v. *Domestic and Foreign Corp.,* 337 U.S. 682. The Court below erred in holding that Congress in 28 U.S.C. 1583 conferred exclusive jurisdiction on the Customs Court to hear such questions. Congress has no power to transfer Art. III jurisdiction to a non-Art. III court. If 28 U.S.C. 1583 attempts such a transfer, it is unconstitutional.

Due process as embodied in the 5th Amendment to the Constitution includes the right to have Art. III questions adjudicated in an Art. III court. Neither the Trade Agreements Act of 1934 nor GATT have been passed upon constitutionally by an Art. III court, despite the fact that the legislation has been the subject of a continual constitutional controversy since its enactment in 1934. Such cases as *U.S.* v. *Capps,* 204 F. 2d 655 and *Seery* v. *U. S.,* 127 F. Supp. 601 suggest grave doubts as to the constitutionality of GATT, and such cases as *Schechter Poultry Corp.* v. *U. S.,* 295 U.S. 495 and *Panama Refining Co.* v. *Ryan,* 293 U.S. 388 suggest an unconstitutional delegation of legislative authority in the Trade Agreements Act of 1934.

The Court below erred in holding that there is no Art. III jurisdiction to resolve these far reaching Art. III questions.

Wherefore, the premises considered, petitioner prays that its petition for a writ of certiorari be granted.

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APPENDIX

ARCHIVES

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13033

MORGANTOWN GLASSWARE GUILD, INC., *Appellant*,

v.

GEORGE M. HUMPHREY, Secretary of the Treasury, *Appellee.*

Appeal from the United States District Court for the District of Columbia

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Decided June 7, 1956

Mr. Carl L. Shipley, with whom Mr. Roy St. Lewis was on the brief, for appellee.

Mr. Marcus A. Rowden, Attorney, Department of Justice, of the bar of the Supreme Court of Michigan, *pro hac vice*, by special leave of Court, with whom Messrs. Leo A. Rover, United States Attorney at the time brief was filed, and Melvin Richter, Attorney, Department of Justice, were on the brief, for appellee. Messrs. Oliver Gasch, United States Attorney, and Lewis Carroll, Assistant United States Attorney, also entered appearances for appellee.

Before Wilbur K. Miller, Washington and Danaher, Circuit Judges.

Per Curiam: The appellee's motion to dismiss appellant's complaint was granted, we think properly. Appellant had sought a declaratory judgment that action by the Secretary pursuant to the General Agreement on Tariffs and

Trade, Geneva 1947, is unconstitutional and that appellee had unlawfully imposed reduced rates of duty upon imported handblown and pressed glassware.

Appellant failed to follow the appeal or protest procedures set up in 19 U.S.C. § 1516. We have previously held that the remedy there provided is appropriate. *Calf Leather Tanners' Ass'n* v. *Morgenthau*, 65 App. D.C. 93, 80 F. 2d 536, 542 (D.C. Cir. 1935), *cert. denied*, 297 U.S. 718 (1936). It is thoroughly settled that " . . . no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Myers* v. *Bethlehem Corp.*, 303 U.S. 41, 50-51 (1938); *Allen* v. *Grand Cent. Aircraft Co.*, 347 U.S. 535, 553 (1954); *National Enforcement Commission* v. *Slim Olson, Inc.*, 95 U.S. App. D.C. 218, 221 F. 2d 92 (D.C. Cir. 1955).

28 U.S.C. § 1583 provides in pertinent part: "The Customs Court shall have exclusive jurisdiction to review on protest the . . . rate and amount of duties chargeable and as to all exactions of whatever character within the jurisdiction of the Secretary of the Treasury . . . ." Appellant claims that the Customs Court lacks authority to pass on constitutional questions, but the law is otherwise. *Cottman Co.* v. *Dailey*, 94 F. 2d 85, 88-89 (4th Cir. 1938); *Riccomini* v. *United States*, 69 F. 2d 480, 481-84 (9th Cir. 1934); cf. *Boston Wool Trade Ass'n* v. *Snyder*, 82 U.S. App. D.C. 144, 161 F. 2d 648 (D.C. Cir. 1947).

Nor is the appellant's position enhanced by its reliance upon the Declaratory Judgment Act, 28 U.S.C. § 2201, which is procedural and confers an additional remedy only in cases where federal courts already have jurisdiction. *Skelly Oil Co.* v. *Phillips Co.*, 339 U.S. 667 (1950); *Hanes* v. *Pace*, 92 U.S. App. D.C. 131, 133, 203 F. 2d 225, 228 (D.C. Cir. 1953).

After appellee had filed his motion to dismiss, appellant sought, but the trial court denied, leave to amend its complaint to charge conspiracy between the Secretary of State

and the Secretary of the Treasury to accomplish the reduction in tariffs of which appellant had already complained. Appellant's motion was properly denied. *Kansas City Power & Light Company* v. *McKay*, 96 U.S. App. D.C. 273, 225 F. 2d 924 (D.C. Cir. 1955), *cert. denied*, 350 U.S. 884 (1955).

The judgment of the District Court is

Affirmed.